

The Council Meeting

Moot Hall, Town Hall
19 May 2010 at 10.30am

Information for Members of the Public

Access to information and meetings

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Have Your Say!

The Council values contributions from members of the public. Under the Council's Have Your Say! policy you can ask questions or express a view to meetings, with the exception of Standards Committee meetings. If you wish to speak at a meeting or wish to find out more, please pick up the leaflet called "Have Your Say" at Council offices and at www.colchester.gov.uk

Private Sessions

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COLCHESTER BOROUGH COUNCIL

TO ALL MEMBERS OF THE COUNCIL

20 May 2010

You are hereby summoned to attend a meeting of the Council to be held at the Moot Hall, Town Hall on **19 May 2010 at 10:30am** for the transaction of the business stated below.



Chief Executive

AGENDA

Prayer

Pages

1. Election of Mayor

A...Motion to elect the Mayor for the ensuing Municipal Year.

The Mayor to make the Declaration and take the customary Oath(The Mayor and Mayor's Escort will receive the Badges of Office at the conclusion of the Oath.)

The Mayor to return thanks.

2. Minutes

1 - 11

B... Motion that the Minutes of the meeting held on 24 March 2010 be confirmed as a correct record.

3. Election of Deputy Mayor

C... Motion to elect the Deputy Mayor for the ensuing Municipal Year.

The Deputy Mayor to make the Declaration and return thanks.(The Deputy Mayor will receive the Badge of Office at the conclusion of the Declaration.)

4. Vote of Thanks to Retiring Mayor

D... Motion of Thanks.

The Retiring Mayor to make the acknowledgement.

5. Mayor's Chaplain and Other Announcements

The Mayor to intimate the appointment of Chaplain and make Announcements.

6. Adjournment

E... Motion to Adjourn

National Anthem

(Members of the public are asked to remain standing after the National Anthem whilst the Council Procession leaves the Moot Hall.)

RECONVENED MEETING

(at 11.30am or such other time as the Mayor shall determine and announce.)

7. Have Your Say!

The Mayor to invite contributions from members of the public who wish to address the Council on a general matter not on this agenda.

(Note: A period of up to 15 minutes is available for general statements and questions under 'Have Your Say!').

8. Appointment of the Leader of the Council and Cabinet

F... Motion to appoint the Leader of the Council for the ensuing Municipal Year.

G... Motion to appoint the Cabinet for the ensuing Municipal Year (details to follow)

9. Delegations made by the Leader of the Council

To note the allocation of responsibility for Portfolios as determined by the Leader of the Council and resulting changes (if any) to the Schemes of Delegation to Cabinet Members and to Officers agreed by the Leader of the Council (details to follow).

10. Appointment of Panels, Committees and Sub-Committees

H... Motion to appoint the Standing Committees, Panels and Sub-Committees for the ensuing Municipal Year (details to follow).

11. Former Councillors

I... Motion of Thanks to Former Councillors

12. Capital Programme - Release of Funds for Visual Arts Facility in Advance of Bond Payment **12 - 15**

See report by the Executive Director

13. Duty to Respond to Petitions **16 - 25**

See report by the Head of Corporate Management

COUNCIL

24 MARCH 2010

Present :- Councillor Henry Spyvee (Chairman)
Councillor Sonia Lewis (Mayor)
Councillor Helen Chuah (Deputy Mayor)
Councillors Christopher Arnold, Nick Barlow,
Lyn Barton, Kevin Bentley, Mary Blandon,
Elizabeth Blundell, John Bouckley, Nigel Chapman,
Peter Chillingworth, Nick Cope, Mark Cory,
Beverly Davies, Tina Dopson, John Elliott,
Andrew Ellis, Margaret Fisher, Stephen Ford,
Wyn Foster, Ray Gamble, Martin Goss,
Chris Hall, Mike Hardy, Dave Harris,
Pauline Hazell, Peter Higgins, Mike Hogg,
John Jowers, Margaret Kimberley, Justin Knight,
Michael Lilley, Sue Lissimore, Jackie Maclean,
Jon Manning, Richard Martin, Kim Naish,
Nigel Offen, Beverley Oxford, Gerard Oxford,
Gaye Pyman, Ann Quarrie, Lesley Scott-Boutell,
Paul Smith, Terry Sutton, Laura Sykes,
Nick Taylor, Jill Tod, Anne Turrell, Dennis Willetts,
Julie Young and Tim Young

The meeting was opened with prayers by the Mayor's Chaplain, The Reverend David Harper.

57. Minutes

The minutes of the meeting held on 17 February 2010 were confirmed as a correct record.

58. Have Your Say!

Bob Russell MP addressed the Council pursuant to the provisions of Meetings General Procedure Rule 6(2) to congratulate the Council on the floral displays on Cowdray Avenue. He questioned whether Essex County Council would allow such large scale planting. He supported unitary status for Colchester as this would allow Colchester to run its own affairs. He stated that approximately £20-30 million of the BSF funding referred to in the Motion previously approved by Council would now be going elsewhere. If the reorganisation was abandoned this would solve the issue of the access to Philip Morant school and allow the existing schools to be retained.

Nick Chilvers addressed the Council pursuant to the provisions of Meetings General Procedure Rule 6(2) to emphasise the importance of safeguarding businesses and job creation. Development in Colchester had concentrated on housing, rather than jobs. More help needed to be given to start up businesses where young people could learn skills. No cuts should be imposed on the Council department responsible for job creation. Cars were now a necessity and provision for cars should be included when planning. He also expressed his support for Colchester in Bloom.

Councillor Barlow, Portfolio Holder for Business and Tourism, responded and promised that a full written response would be sent.

Mr Quince addressed the Council pursuant to the provisions of Meetings General Procedure Rule 6(2) to present two Union flags to the Leader of the Council. These met the Ministry of Defence specification and had anti-fray netting. They should therefore meet the concerns expressed about the previous flag he had presented. He requested that a Union flag be flown from Rowan House by the end of the week.

Councillor Turrell, Leader of the Council and Portfolio Holder for Strategy, replied that she would respond positively to Mr Quince's request if she could and that a flag already flew permanently from the Town Hall, which was the Council's civic building.

Mr Woulf addressed the Council pursuant to the provisions of Meetings General Procedure Rule 6(2) about the provision of allotments in Highwoods. Allotments encouraged sustainability and community cohesion. He expressed concern that the Parks and Recreation budget had been cut. He was looking at a number of sites in Highwoods which would be suitable for allotments. He called on the Portfolio Holder to pledge his support for the provision of allotments in Highwoods and to ensure that the allotment budget was not cut.

A written response would be sent by the Portfolio Holder for Communication, Customers and Leisure.

Mr Laws addressed the Council pursuant to the provisions of Meetings General Procedure Rule 6(2) and the future plans for Gosbecks Archaeological Park. He understood that a significant sum had set aside for the development of the site.

Councillor Turrell, Leader of the Council and Portfolio Holder for Strategy, responded that she would be attending a meeting about Gosbecks shortly. A significant sum had been allocated via a section 106 agreement several years ago. A full written response would be sent.

Andy Hamilton addressed the Council pursuant to the provisions of Meetings General Procedure Rule 6(2). At the Cabinet meeting on 17 March 2010, the Council had refused to provide details of the legal actions being pursued in respect of the Visual Arts Facility (VAF). He believed that public funds were being squandered on legal actions with little chance of success. The exterior works on the VAF were over-budget and the contractor was struggling to complete them. The Council was proposing to spend £6.4 million in 2010/11 on internal fittings. He believed that £1 million already raised by firstsite should be sufficient for the interior works. The VAF could be opened without spending more public money whilst still meeting the Arts Council conditions. The forthcoming election would act as a referendum on the VAF.

Councillor Smith, Portfolio Holder for Resources, Diversity, Culture and the Arts, explained that details of the legal action could not be made public at this stage. Some of the details were sub-judice and it would not be in the public interest to reveal details at this stage as to do so may jeopardise the prospects of the legal action. However, there had already been one judgement in favour of the Council, with costs awarded.

Councillor Bentley offered an apology to Mr Hamilton for the reception he had received whilst speaking under the Have Your Say arrangements at the Council meeting on 17 February 2010.

Mr Wheeler addressed the Council pursuant to the provisions of Meetings General Procedure Rule 6(2) to present a further 60 signatures to the petition presented to the Leader of the Council at the Cabinet meeting on 17 March 2010 about the pay to park proposals for Crouch Street. He stressed that this was not a political campaign. Introducing payment for parking in Crouch Street would not increase the turnover of parking, which was the aim of the proposals. Currently, a single parking space was often used four or five times in a 30 minute period. The proposals would destroy the informal character of Crouch Street.

Councillor T. Young, Portfolio Holder for Street and Waste Services responded that the current administration had not made any decision and was consulting on proposals. It was anticipated that stakeholders would be invited to a round table discussion once the consultation period had expired.

59. Mayor's Announcements

The Mayor announced a lecture "The Future of Energy" by Professor Blowers OBE on 25 March 2010 and the Mayor's Charity Dinner on 14 May 2010.

The Mayor had written to the Mayor of Wootton Bassett paying tribute to the

veterans and citizens of the town for the dignified way they marked the repatriation of fallen servicemen. The letter had been presented to the Mayor of Wootton Bassett by Councillor Sutton, president of the Colchester Royal British Legion at a moving service of thanks in Wootton Bassett and had been gratefully received.

The Mayor announced Merilyn Baldwin, the Mayor's Secretary, would be retiring from the Council on 26 March 2010. The Mayor expressed his personal thanks to Merilyn and the gratitude of all former Mayors she had served for her dedicated and professional support. The Council asked that its appreciation of the excellent service Merilyn had provided be formally recorded.

60. Standards Committee Annual Report 2009/10

RESOLVED that the Standards Committee Annual Report 2009/2010 be noted (MAJORITY VOTED FOR).

61. Review of Standards Committee Composition

RESOLVED that the recommendation contained in minute 21 of the Standards Committee meeting of 5 March 2010 be approved and adopted (MAJORITY VOTED FOR).

62. Review of Local Code of Corporate Governance

RESOLVED that the recommendation contained in minute 73 of the Cabinet meeting of 17 March 2010 be approved and adopted (MAJORITY VOTED FOR).

Councillor Anne Turrell (in respect of her membership of Essex County Council and Myland Parish Council) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

Councillor Laura Sykes (in respect of her membership of Stanway Parish Council) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

Councillor John Jowers (in respect of his membership of Essex County Council and the Regional Planning Panel) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

Councillor Martin Goss (in respect of his membership of Myland Parish Council) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

Councillor Lyn Barton, Councillor Kevin Bentley and Councillor Margaret Fisher (in respect of membership of Essex County Council) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

Councillor Mark Cory (in respect of membership of the East of England Regional Assembly) declared a personal interest in the following item pursuant to the provisions of Meetings General Procedure Rule 7(3)

63. Colchester in 2031

Andy Hamilton addressed the Council pursuant to the provisions of Council Procedure Rule 6(2) to stress the importance of the Council having the resources to back up its efforts to improve the environment. When an enforcement notice over open land was blatantly ignored, the Council should be mandated to issue a compulsory purchase order. The local community could then fund the transfer into a charitable trust so the land would be an asset to the community. The Council would have improved the environment at minimal cost to the taxpayer. The transformation of Colchester in Bloom to a recognised charity would also help with the protection of open spaces. Abandoned buildings also needed protection. Some abandoned buildings were eyesores. Some listed historic buildings were also at risk despite being in private ownership.

Councillor Cory introduced a debate on Colchester in 2031. A report from the Executive Director had been circulated to all members in advance of the meeting.

The following issues were raised in the debate.

Development

- The need for Colchester to cope with an estimated population growth of 80,000. Difficult decisions would need to be taken as to where development should take place to accommodate this growth in population. Most brownfield sites had already been developed. It was vital that housing

- development be accompanied by the relevant supporting infrastructure.
- Concerns about further housing development were expressed. However, account needed to be made of the pressures arising from an increasingly mobile population and the trend towards smaller family units. Failure to meet the growth in housing demand would drive up house prices at the expense of the economically vulnerable. It was important that the right mix of housing types and tenures was delivered.
 - The design of housing development needed to improve to move away from the ubiquitous Essex Design Guide look of recent developments.

Decision making

- Account need to taken of the abolition of the Regional Assembly and the impact this would have on how decisions about the allocation of housing and jobs across the region were taken.
- Careful planning was needed to ensure that decisions were made at the right time. The move to four yearly elections may help with long term planning.
- The long lead in time for housing and economic development meant that decisions about Colchester in 2031 would begin to be taken fairly soon.
- Consultation with residents was vital.
- It was important to be flexible in planning for the future as it was difficult to predict how events and new technologies might shape the future.

Local Government

- Would services be delivered better under a unitary structure?
- It was hoped that communities would be more sustainable and self sufficient so that more of the population would be less reliant on public services. Local government would not need central government targets and initiatives in order to deliver quality services.
- It was hoped that ethnic minority groups would be better represented on the Council.

Other issues

- A sustainable, integrated transport system needed to be delivered. This would not only help addresses issues of congestion but would also help address climate change, which was one of the key challenges facing the borough.
- Communities needed to be sustainable and self sufficient. This could be achieved through the provision of green spaces, more allotments, better public transport. There was a need for an emphasis on localism.
- It was hoped that society would be more compassionate and fairer. The inequalities gap would have been narrowed. Extremist groups would be

defeated. Improved facilities and services would be provided for ethnic minority groups and there would be improved accessibility to public and commercial buildings.

- Meeting the needs of a growing elderly population would be a particularly significant challenge for the Council. It would need to ensure services were provided in an appropriate way and that that the necessary provision was made for an ageing population, such as building sufficient appropriate accommodation. The Council would have an important role in leading the borough on this issue and should ensure that its policies protected and promoted the interests of the elderly.
- High quality cultural facilities could play a key role in “putting Colchester on the map” and in promoting Colchester both nationally and internationally. The Visual Arts Facility and the Mercury Theatre would play an important role in this, but other cultural projects, such as a purpose built concert hall, should be taken forward.
- The Council needed to build on links with University in order to develop a highly skilled workforce and a high wage economy in Colchester.
- Full advantage needed to be taken of recent developments in communications technology and an integrated communications system needed to be developed. However, the full impact of IT developments had to be taken into account. For instance, the growth in online shopping would affect the town centre. It was essential that full consideration was given to those sections of the population who did not have access to such technologies.
- It would be important to develop a retail strategy to help plan the future development of retail and commerce in the borough.

64. Questions to Cabinet Members and Chairmen pursuant to Council Procedure Rule 10

Questioner Subject

Response

Pre-Notified Questions

Councillor Chillingworth	Following my questions to him at the February Council Meeting, is the Portfolio Holder for Communication, Customers and Leisure aware that very few of the March edition of the Courier have, once again, been delivered to residents in my ward? My enquires are proceeding, but so far I have only found 2 households who have received copies. Obviously it is impossible to	Verbal response provided by the Leader of the Council and Portfolio Holder for Strategy and written response to be sent by the Portfolio Holder for Communication, Customers and
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know the full extent of the failure, but I have not received one. Leisure.

Does the Portfolio Holder consider that public money is being properly spent if the Courier was not reaching every household in the Borough.

Oral Questions

Councillor Ford	The insertion of an apostrophe in the sign on the door of the Mayor's Parlour.	Verbal response provided by the Leader of the Council and Portfolio Holder for Strategy.
Councillor Hardy	Would the Portfolio Holder for Planning, Sustainability and the Environment provide details of the response to central government about the extent of housing development in gardens (ie "garden grabbing") and provide details of the extent of "garden grabbing" in the borough? Could the Portfolio Holder ensure that all applications involving housing development in gardens recommended for approval be referred to the Planning Committee for determination?	Written response to be sent by the Portfolio Holder for Planning, Sustainability and the Environment.
Councillor Naish	Installation of the Adizone in Monkwick.	Verbal response provided by the Portfolio Holder for Performance and Partnerships.
Councillor Blundell	What provision was made in the budget for an improved standard of benches in bus waiting areas and what standard of bench did the Portfolio Holder for Planning, Sustainability and the Environment consider was appropriate?	The Portfolio Holder for Planning, Sustainability and the Environment declined to respond to the question.
Councillor Davies	What efforts had the Portfolio Holder for Business and Tourism made to secure a Business Hub exhibition in the Eastern region? Would Colchester be represented at the Business Travel	Written response to be sent by the Portfolio Holder for Business and Tourism.

Network, Business Start Up events and the Speciality and Fine Food Fair?

Councillor Hazell	What progress had been made with the redevelopment of the old football ground site at Layer Road?	Verbal response provided by the Portfolio Holder for Planning, Sustainability and the Environment.
Councillor Ellis	Whether Portfolio Holder for Planning, Sustainability and the Environment had had an opportunity to examine the amount of land available for the construction of the proposed 2200 dwellings within the Northern Growth Area Urban Extension, and will all these dwellings fit into the available area without any loss of land previously allocated as open space? Does the Portfolio Holder agree that the Council should examine whether an Area Action Plan DPD would be a better way of dealing with this development issue, rather than the current Supplementary Planning Document, as it would enable far more community and other expert involvement in the shaping of the development proposals?	Written response to be sent by the Portfolio Holder for Planning, Sustainability and the Environment.
Councillor Lewis	Could the Chairman of the Planning Committee explain the current position on the request that 172 Lexden Road be listed, and explain what the legal and financial implications to the Council of listing the building?	Written response to be sent by the Chairman of the Planning Committee.
Councillor Cope	Could the Portfolio Holder for Street and Waste Services provide an update on the consultation on residents' parking?	Verbal response provided by the Portfolio Holder for Street and Waste Services.
Councillor Willetts	The circumstances around the issuing of a parking ticket to a volunteer taking a blind person to a meeting.	Verbal response provided by the Portfolio Holder for Street and Waste

Councillor Willetts	What negotiations had the Portfolio Holder for Business and Tourism had to ensure that 3500 jobs planned at Stayne Park were delivered as soon as possible?	Services. Verbal response provided by the Portfolio Holder for Business and Tourism.
Councillor Bentley	Could the Portfolio Holder for Business and Tourism provide an update of any discussions he had with the Federation of Small Businesses and the Chamber of Commerce?	Verbal response provided by the Portfolio Holder for Business and Tourism.
Councillor Bentley	Could the Portfolio Holder provide detailed plans for the community involvement in the Olympic Torch bid?	Written response to be sent by the Portfolio Holder for Communication, Customers and Leisure.
Councillor Bentley	The location of the clock that had previously been in the Old Library.	Written response to be sent by the Portfolio Holder for Resources, Diversity, Culture and the Arts.
Councillor Hall	The commitment of the Council to support the Mercury Theatre.	Verbal response provided by the Portfolio Holder for Resources, Diversity, Culture and the Arts.
Councillor Jowers	Could the Leader of the Council report on the meeting of the Area Forum and confirm the level of the Council was receiving from Essex County Council in relation to Parks and Ride, the NAR and the new A12 junction.	Verbal response provided by the Leader of the Council and Portfolio Holder for Strategy.
Councillor Harris	The position on grant funding for the Citizen's Advice Bureau.	Verbal response provided by the Portfolio Holder for Performance and Partnerships.
Councillor Lissimore	The effectiveness of fortnightly litter picks	Verbal response provided by the Portfolio Holder for

		Street and Waste Services.
Councillor G. Oxford	The value of the work done by the Highwoods Community Crew.	Verbal response provided by the Portfolio Holder for Street and Waste Services.
Councillor Naish	The quality of the work done by the Street Care and Cleaning teams.	Verbal response provided by the Portfolio Holder for Street and Waste Services.
Councillor Goss	The effectiveness of the litter picking and cleaning work recently completed on the Northern Approaches Road.	Verbal response provided by the Portfolio Holder for Street and Waste Services.

65. Schedules of Decisions taken by Portfolio Holders

RESOLVED that the Schedule of Portfolio Holder decisions for the period 6 February 2010-11 March 2010 be noted.



Council

Item
12

19 May 2010

Report of	Executive Director	Author	Ian Vipond ☎ 282717
Title	Capital Programme – release of funds for Visual Arts Facility in advance of Bond payment		
Wards affected	All		

This report seeks to enable the final fit out stage of the Visual Arts Facility to proceed.

1. Decision Required

- 1.1 To allow up to £1.1m of funds to be spent on the Capital Programme towards the final fit out stage of the Visual Arts Facility (VAF) in advance of the expected bond payment.
- 1.2 To agree that, if required, the £1.1m be financed through borrowing in advance of the expected bond repayment and that the financial implications be reflected in the budget forecast and that any necessary changes are made to the agreed prudential indicators.

2. Background

- 2.1 The external fabric of the VAF is due to be completed in July this year following a protracted construction programme which led to the Council determining (ending) the contract with the previous main contractor and appointing the Mace Group to construction manage this build project. Since taking over Mace have helped to bring the project under tighter control and look likely to deliver the externally complete building by this July within the budget they were set.
- 2.2 The Council continues to take legal action in regard to recovering costs associated with the poor workmanship and poor advice associated with the earlier part of the project. In this regard the Council was recently successful in winning an adjudication against the former main contractor in connection with the right to determine the contract. As a key consequence of that judgement the Council should now be able to recover the Bond which was held by the contractor in the event that they did not perform. The bond was for up to £1.4m and as the financial consequence of the situation is believed to be beyond this then the Council will seek to recover this bond value in full. However it needs to be recognised that the legal actions are by no means over and the former main contractor has a court action outstanding against the Council and there are other Council legal actions pending.
- 2.3 Mace have now started the process of procuring the final construction stage to provide the internal fit out of the building. This fit out stage is intended to be complete by next summer subject to successful procurement which includes

matching the tenders from various contractors to the funds available. The Council and the other main funders of the project are assessing information from Mace as to the likely final build cost and how that cost can be met.

- 2.4 As part of this process the Council is to consider underwriting the likely future bond payment. This is important as the Bond may take sometime to recover given outstanding legal actions, but experience is that any unnecessary delay in the project is likely to increase the final cost. Given that the Council is committed to seeing the project finished, but at the best value cost for the taxpayer, then there is a need to avoid any further unnecessary delays. The Council is aware that it has already expended significant sums on this project not only in terms of the construction project but also in legal fees which it hopes to recover. However, in this context it is proposed that the Council forward fund £1.1m, not the full potential value of the bond at £1.4m, as there are likely to be some legal and associated costs in recovery.
- 2.5 The other main funders, The Arts Council and Essex County Council have indicated that if the Council is prepared to do this then in principle they will cover the remaining outstanding costs of the project, once they are known from the procurement process, up to a fixed limit. It is currently expected that this figure could be several million pounds. Therefore there is a considerable advantage to the Council in securing this decision now.

3. Alternative Options

- 3.1 The Council could decide not to forward fund the £1.1m which would put at risk the delivery of this project and would be likely to significantly increase the cost to this Council as a result of the likely delays while an alternative approach was considered. The Council remains under the terms of the contracts with the other main funders legally bound to complete this project.

4. Strategic Plan References

- 4.1 The key aim of the strategic plan is to make Colchester a place where people want to live, work and visit. Delivery of the Visual Arts Facility was identified in the 2006 Strategic Plan.

5. Financial Considerations

- 5.1 To forward fund the bond to a level of £1.1m could incur borrowing costs. However this does depend on when the bond is recovered. The Council would be unlikely to require these funds until late in the fit out works by which time the bond could have been recovered and there would, in those circumstances, be no need to bring forward these funds. Borrowing costs include interest and MRP (minimum revenue provision – i.e. debt repayment)
- 5.2 Interest costs will depend on how long we have the borrowing exposure for. If required at all the borrowing should only last for a year or two on the basis that we seek to use the bond to repay the debt. Currently, we could borrow for 2 -3 years at about 2% (or less). Therefore the interest cost would be around £22k depending on the borrowing exposure chosen at the time the money is borrowed, should it need to be.

- 5.3 MRP rules are such that we don't have to start setting aside money to repay debt until the April after the VAF is potentially opened i.e. the cost would not start until 2012/13. On this basis given successful recovery of the bond in that time frame it would not be payable. If it became payable then MRP is calculated based on an "asset life". So in respect to the VAF we *might assume* 50 years (for accounting purposes). Based on £1.1m this would therefore mean £22k pa.
- 5.4 If the bond is not recovered (see risk section) then the borrowing would have to be adjusted and borrowed over the long term with revenue implications. It might in those circumstances be more appropriate to consider the cost of borrowing over a longer period, say 20 years. Longer term rates are about 4.7% giving an interest cost of £50k p.a.
- 5.5 One appropriate approach for the Council to consider is whether the current existing Capital programme could be adjusted in order to bring these funds forward within the programme potentially avoiding any additional advancement of Capital funds. Given that the funds are likely to be repaid at some stage (possibly within a year) this has genuine merit as an option. This option will be considered as part of the review of the Capital Programme at the next opportunity.

6. Equality, Diversity and Human Rights Implications

- 6.1 The Council has a commitment to achieve fair access, removing where possible physical, financial, administrative and communication barriers to ensure that everyone, regardless of age, gender, disability, race, wealth and social status, has the opportunity to use our services. Where it is impossible to remove a barrier, then the aim is to reduce it or find alternative methods of access. There are no particular equality, diversity or human rights implications related to this decision.

7. Community Safety, Consultation, Health & Safety and Risk Management Implications

- 7.1 No direct implications.

8. Publicity considerations

- 8.1 This is a high profile project and so any report may attract public and media interest and this is being managed by the Councils communications team in liaison with the Portfolio Holder.


9. Risk Management Implications

- 9.1 Unfortunately, there are and will continue to be for the foreseeable future risks connected with the Visual Arts Facility together with significant public relations and reputational issues that the Council will have to seek actively manage. However the different management arrangements within the construction project have led to a significant reduction in the levels of risk associated with the project. There is a specific risk associated with this decision in that there can be no guarantee that the bond will be recovered until it has been actually been paid into the Councils

accounts. Although the probability of this risk has reduced given the adjudication decision, if it is not recovered then the cost will fall on the Council Capital programme.

- 9.2 In the event that the Council is unsuccessful in litigation there will be implications for the Council not only to fund the Council's legal costs and possibly the winning parties' legal costs, but also to meet the claim for loss of income by that party. However the advice to the Council remains that its own claims are strong and the recent adjudication decision gives strength to that argument. Risks are being reduced by a phased approach to litigation with reviews at significant points by the Council's external legal advisers and/or others.

19 May 2010

Report of	Head of Corporate Management	Author	Amanda Chidgey
Title	Duty to Respond to Petitions		 282227
Wards affected	All wards		

This report gives details of the Local Democracy, Economic Development and Construction Act 2009 in relation to the provisions relating to petitions and proposes appropriate changes to be made to the Constitution to reflect new duties shortly to come into force.

1. Decision(s) Required

- 1.1 That the provisions relating to petitions contained within the Local Democracy, Economic Development and Construction Act 2009 be noted;
- 1.2 That the Council be recommended to approve the following, subject to any amendments deemed necessary:
 - (i) Procedure Rules in relation to Petitions, as set out in Appendix B to this report;
 - (ii) The Monitoring Officer be authorised to make all necessary amendments to the Council's Constitution to reflect the measures contained in (i) above;
 - (iii) That the operation of the petition rules be reviewed by the Cabinet in June 2011 and any necessary recommendations for change be made to the Council as appropriate.

2. Reasons for Decision(s)

- 2.1 The Local Democracy, Economic Development and Construction Act requires all principal local authorities in England to establish by 15 June 2010 a scheme for handling petitions made to the authority which must be approved by a meeting of the full council before it comes into force. In addition, by 15 December 2010, the petition scheme needs to be accessible on the internet.

3. Alternative Options

- 3.1 The Act requires petition schemes to meet certain minimum standards although local authorities have a high level of flexibility as to how they approach the duty and are encouraged to consider designing a scheme which is wider than these requirements, for example, responding to petitions from those who do not live, work or study in the local area or e-petitions which are not made through the authority's own e-petition facility.

4. Supporting Information

- 4.1 The minimum requirements contained in the Act are set out below:
 - Anyone who lives, works or studies in the local authority area, including under 18's, can sign or organise a petition and trigger a response;

- A facility for making electronic petitions is provided by the local authority;
 - Petitions must be acknowledged within a time period specified by the local authority;
 - Among the many possible steps that the authority may choose to take in response to a petition, the following steps must be included:
 - taking the action requested in the petition
 - considering the petition at a meeting of the authority
 - holding an inquiry
 - holding a public meeting
 - commissioning research
 - a written response to the petition organiser setting out the authority's views on the request in the petition
 - referring the petition to an overview and scrutiny committee
 - Petitions with a significant level of support trigger a debate of the full council. Councils will determine this threshold locally but it must be no higher than 5 per cent of the local population;
 - Petitions with a requisite level of support trigger a senior local government officer to give evidence at a meeting of the authority's overview and scrutiny committee;
 - Petition organisers can prompt a review of the local authority's response if it is felt to be inadequate.
- 4.2 The requirements listed above are the minimum set by the 2009 Act but the guidance states that Local authorities are encouraged to consider designing a scheme which is wider than these requirements.
- 4.3 The Department of Communities and Local Government has issued a publication entitled 'Listening to Communities' which sets out the statutory guidance on the duty to respond to petitions. The guidance sets out the key principles and key requirements of the petitions duty and gives guidance to which local authorities must have regard when designing and complying with their petition scheme. In addition, the guidance sets out various expectations of local authorities, including
- Designing a petition scheme
 - Responding to petitions
 - Verification of signatures and acknowledgement
 - Relevant matters and Exclusions
 - E-petitions
 - Petition debates
 - Giving evidence
 - Petition reviews
 - Triggering a meeting of the full council
 - Publicising the outcome of the review
- 4.4 The Guidance includes a model scheme which local authorities may choose to adopt or to adapt to local circumstances. The model scheme demonstrates the Government's principles regarding petitions, including the point that local authorities should approach their petition scheme from the starting point of responding to all the petitions they receive, regardless of the number of signatures.
- 4.5 In anticipation of this new duty the Council approved procedure rules in relation to petitions at its meeting in April 2009 (see Appendix A attached). Since that time a total of three petitions have been received, one of which related to a Highway Authority matter.

4.6 The existing procedure rules addressed many of the minimum requirements set out in the Guidance. However these rules will need to be reviewed in order to ensure it is at least compliant with all the necessary requirements.

5. Proposals

5.1 The Council's Petition Procedure Rules have been amended to include all of the Government's minimum requirements as well as taking into account some of the discretionary elements included in the model scheme and are attached at Appendix B. The amendments made have been in relation to:

- **The retention of the six person threshold for a valid petition**

The Council's existing petition scheme states that a petition must contain six or more signatures for it to be valid.

The Guidance does not stipulate a minimum number of signatures for validity and it is therefore a matter for each local authority to determine. However, the model scheme does encourage the approach that all petitions will be responded to regardless of the number of signatures.

- **The many possible steps that the authority may choose to take in response to a petition**

Only the steps listed as requirements of the duty have been included.

- **The level of support required to trigger a debate of the full council**

The Guidance requires a number corresponding to no more than 5% of the local population. Assuming Colchester's population is currently 180,000 this would equate to 9,050 signatures. The model scheme is based on an authority with a population of 150,000 and provides for petitions containing 1,500 signatures (1% of the local population) being debated by the council. The council's existing scheme makes no provision for the triggering debates. It is therefore proposed that a threshold of 1800, corresponding to 1% of the population, is included.

- **The level of support required to trigger a senior local government officer to give evidence at a meeting of the authority's overview and scrutiny committee**

The Guidance states that authorities must determine how many signatures will be needed to require an officer to attend a meeting, according to local circumstances and ensuring that the thresholds will be achievable. The Guidance further states that thresholds are set low, such as the figure of 750 used in the model scheme (0.5% of the local population). The thresholds may be reviewed and amended if necessary. If, for example, no such evidence sessions are triggered by petition in the space of a year the Guidance suggests that local authorities should consider the reasons for this and whether the threshold set may be too high. If it is deemed that authorities are setting requirements which are unachievable, the Secretary of State has the power to direct authorities to amend their petition schemes. It is therefore proposed that a threshold of 900, corresponding to 0.5% of the population, is included. In order to prevent confusion it is proposed that the scheme include a definition of 'senior local government officer' and this definition be 'appropriate officers in the Council's Senior Management Team'.

- **Petition organisers' ability to prompt a review of the local authority's response if it is felt to be inadequate.**

The Act gives the lead petitioner the power to ask an overview and scrutiny committee to review that authority's response to the petition. The overview and scrutiny committee will decide whether the steps taken by the authority in response to the petition were adequate.

One of the steps that an authority might take in response to a petition is to refer it to the overview and scrutiny committee for consideration. Should the petition

organiser subsequently request a review authorities might wish to arrange for a different overview and scrutiny committee to carry out a review.

The overview and scrutiny committee will bear in mind the list of potential steps which could be used to respond to the petition, including a full review of the issues raised in the petition using their powers under the Local Government Act 2000, that is to arrange for the full council to carry out the review function.

The local authority must inform the lead petitioner of the results of the review and the results must also be published on the authority's website.

5.2 In approving the content of the proposed procedure rules, consideration should be given, in particular, to the proposals to:

- Retain the minimum number of signatories to provide validity;
- Introduce a 1800 signatory threshold to trigger a full council debate;
- Provide for a full council debate;
- Introduce a 900 signatory threshold to trigger an officer giving evidence;
- Provide for officers in the Senior Management Team to give evidence;
- Provide for a right of review.

5.3 Investigations are underway in relation to an online petition facility and it is anticipated that these will progress satisfactorily to meet future statutory requirements.

6. Strategic Plan References

6.1 The Local Democracy, Economic Development and Construction Act 2009 forms part of the Government's wider Community Empowerment agenda, putting local authorities at the forefront of the drive to reconnect people with public and political decision-making. As such it will contribute towards all of the Council's Strategic Plan Priorities but particularly those relating to Community Development.

7. Consultation and Publicity Considerations

7.1 The new provisions involve changes to the Council's Procedure Rules in relation to petitioning which will be communicated to the public by means of the web site.

8. Financial implications

8.1 It is difficult to assess the likely financial impact of the changes identified in the report, however from experience elsewhere, it is considered unlikely that the duty to respond to petitions will generate significant numbers of issues that will require action.

8.2 The introduction of an online petition facility will involve additional costs, if only in respect of the initial purchase which is expected to be in the region of £2,500 although this will be dependent on the availability of shared resources across the County or region and the preferred sophistication of the system to be utilised.

9. Equality, Diversity and Human Rights implications

9.1 There are no direct implications for Equality and Diversity from these proposals and as such a full EQIA has not been deemed necessary. The duty of councils to respond to issues of importance from within communities is likely to have a positive impact on the promotion of equality and may, to some extent, overcome discrimination in relation to gender, gender reassignment, disability, sexual orientation, religion or belief, age and race/ethnicity.

10. Community Safety, Health and Safety and Risk Management Implications

- 10.1 There are no particular references to community safety, health and safety or risk management implications.

Colchester Borough Council Petition Procedure Rules

Introduction

The Council at its meeting on 22 April 2009 approved these Petition Procedure Rules and will keep them under review.

Requirements for a valid petition

1. Any petition must contain six or more signatures of people who live, work or study in the Borough.
2. A petition should include:
 - (a) A reason for petitioning the Council (what the Council is being asked to do);
 - (b) The signatures of each petitioner followed by the date of signature, their name printed and their address;
 - (c) An indication of the person designated as the lead petitioner or petition organiser.
3. A valid petition must:
 - (a) Relate to a function of the Council;
 - (b) Relate to an improvement in the economic, social or environmental well-being of the Council's area to which any of the Council's partner authorities could contribute;
 - (c) Not relate to a planning or licensing decision;
 - (d) Not relate to a matter where a right of recourse or right of appeal is already provided for in law.
4. A petition will not be accepted as valid, and the lead petitioner will be informed as such, in the following circumstances:
 - (i) In the opinion of the Monitoring Officer, the petition is vexatious, abusive or otherwise inappropriate to be dealt with;
 - (ii) A petition to the same or substantially similar effect has been made to the council within the previous six months of the petition being received.

To whom the petition must be addressed?

5. The petition must be sent to the Democratic Services Manager at PO Box 884, Town Hall, High Street Colchester, CO1 1PJ who will:
 - (a) Arrange for details of the petition to be communicated to all Councillors;
 - (b) Send a copy to Ward Councillors where the petition relates to or affects particularly part(s) of the borough;
 - (c) Send a copy to the relevant Portfolio Holder(s);
 - (d) Send a copy of the petition to the relevant Head(s) of Service;
 - (e) Within five working days, formally acknowledge receipt by the Council.

How will the Council respond to the petition?

6. Within a further ten working days from the period referred to in 5(e) above, the lead petitioner will be informed by the relevant Head of Service of the course of action being proposed;
7. Within six weeks of a petition being received the lead petitioner will be informed by the relevant Head of Service of the decision of the Council.

What actions will be taken?

8. All petitions will be reported to the Cabinet with a note of the action taken or recommended.
9. The appropriate Portfolio Holder(s) after consulting with the appropriate Head(s) of Service and ward councillors will determine the most appropriate course of action which could be:
 - (a) To decide the council's response using delegated powers and then report on this to the Cabinet;
 - (b) To report the petition to the Cabinet setting out the action taken/options/recommendations.
10. Action taken in response to a petition and brief reasons why will be communicated by the Head of Service to the lead petitioner/petition organiser and to all councillors.
11. Where a petition is reported to the Cabinet in open session – other than for noting – the lead petitioner (or substitute) will, at the Chairman's discretion, be permitted to speak for up to 3 minutes before the report is debated. In the interests of fairness, the Chairman may also invite one other speaker from the public to speak for up to 3 minutes against the petition. The Cabinet will not normally delay considering a matter if the petitioner does not attend the meeting to speak.
12. If the subject matter of a petition is included in the papers already published for a meeting of the Cabinet by the time the petition is received then the petition will be circulated at the meeting at which the report is considered (along with any written comments on the petition that officers may wish to make).

Colchester Borough Council Petition Procedure Rules

Introduction

The Council at its meeting on 19 May 2010 approved these Petition Procedure Rules and will keep them under review.

Requirements for a valid petition

1. Any petition must contain six or more signatures of people who live, work or study in the Borough, including anyone under 18.
2. A petition should include:
 - (a) A reason for petitioning the Council (what the Council is being asked to do);
 - (b) The name and address and signature of any person supporting the petition;
 - (c) An indication of the person designated as the lead petitioner or petition organiser.
3. A valid petition must:
 - (a) Relate to a function of the Council;
 - (b) Relate to an improvement in the economic, social or environmental well-being of the Council's area to which any of the Council's partner authorities could contribute;
 - (c) Not be a statutory petition (for example requesting a referendum on having an elected mayor);
 - (d) Not relate to a planning or licensing decision;
 - (e) Not relate to a matter where a right of recourse or right of appeal is already provided for in law.
4. A petition will not be accepted as valid, and the lead petitioner will be informed as such, in the following circumstances:
 - (a) In the opinion of the Monitoring Officer, the petition is vexatious, abusive or otherwise inappropriate to be dealt with;
 - (b) A petition to the same or substantially similar effect has been made to the council within the previous six months of the petition being received.

To whom the petition must be addressed?

5. The petition must be sent to the Democratic Services Manager at PO Box 884, Town Hall, High Street Colchester, CO1 1PJ who will:
 - (a) Arrange for details of the petition to be communicated to all Councillors;
 - (b) Send a copy to Ward Councillors where the petition relates to or affects particularly part(s) of the borough;
 - (c) Send a copy to the relevant Portfolio Holder(s);
 - (d) Send a copy of the petition to the relevant Head(s) of Service;
 - (e) Within five working days, formally acknowledge receipt by the Council.
6. Petitions can be presented to any meeting of the council, including Cabinet, Planning Committee and Scrutiny Panels. These meetings generally start at 6pm, details of dates and times can be found from the Council and Democracy pages of the Council's website:

Borough Councillors and Committees

How will the Council respond to the petition?

7. Within a further ten working days from the period referred to in 5(e) above, the lead petitioner will be informed by the relevant Head of Service of the course of action being proposed;
8. Within six weeks of a petition being received the lead petitioner will be informed by the relevant Head of Service of the decision of the Council.

What actions will be taken?

9. All petitions will be reported to the Cabinet with a note of the action taken or recommended which could include:
 - (a) taking the action requested in the petition;
 - (b) considering the petition at a council meeting;
 - (c) holding an inquiry into the matter;
 - (d) holding a public meeting;
 - (e) commissioning research;
 - (f) referring the petition to an overview and scrutiny committee.
10. The appropriate Portfolio Holder(s) after consulting with the appropriate Head(s) of Service and ward councillors will determine the most appropriate course of action which could be:
 - (a) To decide the council's response using delegated powers and then report on this to the Cabinet;
 - (b) To report the petition to the Cabinet setting out the action taken/options/recommendations.
11. Action taken in response to a petition and brief reasons why will be communicated in writing by the Head of Service to the lead petitioner/petition organiser and to all councillors.
12. Where a petition is reported to the Cabinet in open session – other than for noting – the lead petitioner (or substitute) will, at the Chairman's discretion, be permitted to speak for up to 3 minutes before the report is debated. In the interests of fairness, the Chairman may also invite one other speaker from the public to speak for up to 3 minutes against the petition. The Cabinet will not normally delay considering a matter if the petitioner does not attend the meeting to speak.
13. If the subject matter of a petition is included in the papers already published for a meeting of the Cabinet by the time the petition is received then the petition will be circulated at the meeting at which the report is considered (along with any written comments on the petition that officers may wish to make).

Full council debates

14. If a petition contains at least 1,800 signatures it will be debated by the full council at its next meeting, although on some occasions this may not be possible and consideration will then take place at the following meeting.

15. The lead petitioner will be given three minutes to present the petition at the meeting and the petition will then be discussed by councillors in accordance with the usual rules of debate. The council will decide how to respond to the petition at this meeting. They may decide to take the action the petition requests, not to take the action requested for reasons put forward in the debate, or to commission further investigation into the matter, for example by a relevant committee.
16. Where the issue is one on which the Cabinet is required to make the final decision, the council will decide whether to make recommendations to inform that decision.

Officer evidence

17. A petition may ask for a senior council officer to give evidence at a public meeting about something for which the officer is responsible as part of their job. For example, your petition may ask a senior council officer to explain progress on an issue, or to explain the advice given to elected members to enable them to make a particular decision. If a petition contains at least 900 signatures and calls for an officer to give evidence, the appropriate officer in the Council's Senior Management Team will attend the meeting of the Strategic Overview and Scrutiny Panel.

E-petitions

18. The council is making arrangements to provide for petitions to be submitted and viewed through its website, in accordance with the same guidelines as paper petitions.

What can I do if I feel my petition has not been dealt with properly?

19. If the lead petitioner feels that the Council has not dealt with a petition properly, the lead petitioner has the right to request that the Strategic Overview and Scrutiny Panel reviews the steps that the council has taken in response to the petition. The prospects of this request will be improved where it is accompanied by an explanation of the reasons why the council's response is not considered to be adequate.
20. The Strategic Overview and Scrutiny Panel will endeavour to consider your request at its next meeting, although on some occasions this may not be possible and consideration will take place at the following meeting. Should the Panel determine the Council has not dealt with your petition adequately, it may use any of its powers to deal with the matter. These powers include instigating an investigation, making recommendations to the Cabinet and requesting that the matter be considered at a meeting of the full council.

